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In The

## Supreme Court of the United States

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October Term, 1977

No. 77-952

GROUP LIFE AND HEALTH INSURANCE COMPANY  
a/k/a BLUE SHIELD OF TEXAS, *et al.*,

*Petitioners.*

-against-

ROYAL DRUG COMPANY, INC. d/b/a ROYAL  
PHARMACY OF CASTLE HILLS and DISCO  
PRESCRIPTION PHARMACY, *et al.*,

*Respondents.*

*On Appeal from the United States Court of Appeals, Fifth  
Circuit*

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**BRIEF OF THE UNITED FEDERATION OF TEACHERS  
WELFARE FUND, AS *AMICUS CURIAE* IN SUPPORT OF  
PETITIONERS**

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STEPHEN F. GORDON

*Attorney for United Federation  
of Teachers Welfare Fund*

98 Cutter Mill Road

Great Neck, New York 11021  
(516) 466-6030

MIRKIN, BARRE, SALTZSTEIN  
& GORDON, P.C.

JEFFREY L. KREISBERG

*Of Counsel*

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### INTEREST OF *AMICUS CURIAE*

The United Federation of Teachers Welfare Fund is an employee benefit fund established as a result of collective bargaining between the United Federation of Teachers, a labor union which represents, for purposes of collective bargaining, teachers and other pedagogical employees employed by the City of New York, and the Board of Education of the City of New York. The Welfare Fund is funded by contributions made by the City of New York in amounts stipulated in the current collective bargaining agreement between the Union and the City. The Welfare Fund is administered by a Board of Trustees designated under the Agreement and Declaration of Trust which governs the operation of the Fund.

The Welfare Fund provides various benefits to its covered members, as defined in the Fund Plan, including medical benefits supplemental to those provided by the City of New York, dental benefits, optical benefits, accident and sickness disability benefits, death benefits, and prescription drug benefits.

Under the Prescription Drug Plan, the Welfare Fund will pay the full cost of a member's prescription drugs, no matter what the charge, providing the prescription is filled by a Participating Pharmacist. A Participating Pharmacist is a pharmacist who has entered into an agreement with the Welfare Fund accepting its prescription program together with a price schedule adopted by the Fund.

If a Non-Participating Pharmacist is used, reimbursement is made in accordance with a specific schedule of allowances. When a Non-Participating Pharmacist is used, there is no assurance that the charges will not exceed the amount that the Fund allows. In such instances, payment by the member may exceed the benefit provided by the Welfare Fund.

Each covered employee is issued an Identification Card authorizing any Participating Pharmacy to fill prescriptions

which come within the scope of the Plan. The Identification Card certifies the member's eligibility to the Participating Pharmacist.

Prescriptions are obtained on a special blank printed by the Welfare Fund. Upon presentation of a covered prescription written on an official Welfare Fund prescription blank and Identification Card to a Participating Pharmacist, the prescription will be filled and the entire charge will be paid by the Welfare Fund in accordance with its agreement with the pharmacy.

If a prescription is filled at a Non-Participating Pharmacy, the Fund requires an original receipted bill indicating the date the prescription was filled, the prescribing doctor's name, the patient's name, the prescription number, and the name, strength, quantity and dosage of the drug prescribed. Such original receipted bills must then be submitted to the Fund for payment, and reimbursement will be made in accordance with the Schedule of Allowances on file at the Welfare Fund. Reimbursement is determined by the price the Fund would have paid for the same drug if it had been purchased at one of the Participating Pharmacies.

The prescription drug benefit is provided directly by the Welfare Fund rather than through an insurance company or other third party payor.

This *amicus* brief in support of petitioners is prompted by the concern of the Welfare Fund that the decision in this case may be sufficiently broad to affect the Fund.

The parties have consented to the filing of an *amicus curiae* brief by the United Federation of Teachers Welfare Fund. A copy of the letter evidencing these consents is on file in the office of the Clerk of the Court.

## OPINIONS BELOW

The opinion of the District Court is reported at 415 F. Supp. 343. The opinion of the Circuit Court is reported at 556 F. 2d 1375.

## SUMMARY OF ARGUMENT

The decision of the Circuit Court should be reversed and the complaint dismissed. The attempt by a provider of prescription drug benefits to limit the cost of such benefits by entering into agreements with pharmacies to accept a fee schedule as payment in full promotes competition, is in the best interest of consumers and does not violate the anti-trust laws.

The experience of the United Federation of Teachers Welfare Fund has shown that the agreements between the Fund and Participating Pharmacies under which Participating Pharmacies have agreed to accept the Fund's fee schedule as payment in full *fosters* competition and makes the small neighborhood drugstore better able to compete with its large chainstore or supermarket competitors. This has occurred due to the fact that while the large stores, most of which are Non-Participating Pharmacies, generally undersell the smaller neighborhood stores, most of which are Participating Pharmacies, members will nevertheless patronize the neighborhood stores because such stores are usually more convenient and the member incurs no out-of-pocket cost.

Under this arrangement there exists no incentive among members of the Fund to patronize mail order or other discount sellers. Thus, the Fund's entering into a prescription drug plan agreement with Participating Pharmacies is not anti-competitive. Rather, such agreements have helped enable small local stores to remain in business in the face of overwhelming competition from large competitors. In fact, the Fund's Prescription Drug Plan is designed to help maintain the existence of the neighborhood drugstore.

The further effect of the Fund's Plan has been to contribute toward encouraging lower drug prices. The result of this is to provide greater benefits to all its covered members with the limited funds available for the program.

In the event this Court affirms the decision of the Circuit Court herein, and if that decision is sufficiently broad to effect the United Federation of Teachers Welfare Fund, the result will be harmful to the ultimate consumers who are covered by the Fund. It is respectfully submitted that the agreements entered into between the Fund and Participating Pharmacies as described above are not anti-competitive and should not be upset by this Court.

## CONCLUSION

The decision of the Court should be reversed and the complaint dismissed.

Respectfully submitted,

Stephen F. Gordon  
Attorney for United Federation  
of Teachers Welfare Fund  
98 Cutter Mill Road  
Great Neck, New York 11021

MIRKIN, BARRE, SALTZSTEIN  
& GORDON, P.C.  
Jeffrey L. Kreisberg  
*Of Counsel*